

PT 97-69

Tax Type: PROPERTY TAX

Issue: Educational Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

GREATER PEORIA REGIONAL)	
AIRPORT AUTHORITY (owner))	
EMTOO, INC. (lessee))	
Applicant)	
)	Docket # 96-72-207
v.)	
)	Parcel Index #17-15-376-006
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held on September 25, 1997, at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, to determine whether or not Peoria County Leasehold Parcel Index No. 17-15-376-006 qualified for exemption from real estate taxation for the 1996 assessment year.

Mrs. Jean McLaughlin, vice president of Emtoo, Inc. (hereinafter referred to as "Emtoo") was present and testified on behalf of Emtoo.

The issues in this matter include, first, whether Greater Peoria Regional Airport Authority (hereinafter referred to as the "Airport Authority") is an airport authority; secondly, whether the Airport Authority owned the land on which this leasehold parcel is located; thirdly, whether the leasehold parcel in issue was used by the Airport

Authority for airport authority purposes; and finally, whether this leasehold parcel was leased by an exempt organization which thereby qualified said leasehold parcel for exemption from real estate taxation for the 1996 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the Airport Authority is an airport authority and that it owned the land on which this leasehold parcel is located. It is also determined that the Airport Authority used this leasehold parcel by leasing it for airport authority purposes. Finally, it is determined that Emtoo was not an exempt organization and therefore this leasehold parcel did not qualify for exemption for the 1996 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the leasehold parcel here in issue did not qualify for exemption for the 1996 assessment year, was established by the admission in evidence of Department's Ex. Nos. 1 through 5.

2. Mrs. McLaughlin stated that she recalled that at the pre-hearing conference held on August 25, 1997, the Administrative Law Judge had advised her that it would be appropriate for her to be represented by legal counsel at the hearing. She further stated that she wished to proceed without counsel. (Tr. p. 7)

3. Documents submitted by the Peoria County Board of Review establish that the Airport Authority owned the fee on which this leasehold parcel is located. (Dept. Ex. Nos. 2C & 2E)

4. I take Administrative Notice of the fact that the Director of the Illinois Department of Revenue has determined in Docket Nos. 86-72-1217 *et al.*, in a decision dated January 10, 1991, and Docket Nos. 86-72-1162 *et al.*, in a decision dated July 23, 1991, that the Airport Authority is an airport authority.

5. The leasehold parcel here in issue measures 15 feet by 14 feet and during 1996 was used by Emtoo as its business office. (Tr. pp. 9 & 13)

6. Emtoo is a for-profit corporation incorporated under the "Business Corporation Act" of Illinois, on February 7, 1978. (Appl. Ex. No. 3)

7. Mrs. McLaughlin and her husband are the owners of Emtoo, and they are both flight instructors. Mr. McLaughlin is also an FAA examiner who is authorized to issue flight certificates or licenses to pilots to fly private, commercial, and multi-engine aircraft. (Tr. p. 9)

8. Both in Mr. and Mrs. McLaughlins' activities as flight instructors and in Mr. McLaughlin's activities as an examiner, the training and examinations require oral examinations and written work which is performed in the office on the leasehold parcel here in issue. (Tr. p. 11)

9. During 1996, with the exception of a local flying club, which provides flight instruction to its members, Emtoo is the only organization offering flight instruction at either of the two airports operated by the Airport Authority, namely the Mt. Hawley Airport and the Greater Peoria Regional Airport. (Tr. p. 14)

10. During 1996, Mr. McLaughlin was the only FAA authorized examiner offering flight certifications at the airports operated by the Airport Authority. (Tr. p. 15)

11. During 1996, Emtoo occupied the leasehold parcel here in issue located in the Executive Hangar at the Greater Peoria Regional Airport and paid rent to the Airport Authority on a month to month basis pursuant to the Rates and Fees Ordinance of the Airport Authority. (Dept. Ex. 2F)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-160 exempts certain property from taxation in part as follows:

All property belonging to any Airport Authority and used for Airport Authority purposes or leased to another entity, which property use would be exempt from taxation under this Code if it were owned by the lessee entity, is exempt.

35 **ILCS** 200/9-195 provides in part as follows:

Except as provided in Section 15-55, when property which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as on property that is not exempt, and the lessee shall be liable for those taxes.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

Based on the findings of fact, I conclude that the Airport Authority is an airport authority and that it owned the fee interest underlying the leasehold parcel here in issue. I also conclude that since the Airport Authority leased this parcel to Emtoo, which was the only organization offering flight training or pilot certification on the airports operated by the Airport Authority, said area was leased to Emtoo for airport authority purposes. Consequently, I conclude that the fee underlying the Emtoo leasehold was owned by an airport authority and used for airport authority purposes during the 1996 assessment year.

In the case of Harrisburg-Raleigh Airport Authority and Fox Valley Airport Authority v. The Department of Revenue, 126 Ill.2d 326 (1989), the Illinois Supreme Court exempted certain property from taxation which was owned by the Harrisburg-Raleigh Airport Authority and also certain property owned by the Fox Valley Airport Authority. One of the parcels involved in the Fox Valley portion of that case concerned an exemption for the land only of a parcel on which there was a leasehold parcel concerning a privately owned improvement, which was taxed to the lessee. While the Supreme Court exempted the land, it did not have the issue of leasehold before it. Therefore, the Court did not disturb the leasehold assessment on the improvement, a hangar, used for the storage of aircraft. A close reading of the Harrisburg-Raleigh case makes it clear that all that was considered in that case was the fee interest of the respective airport authority in various tie downs and hangars leased by the airport authority to private members of the flying public. The Court in that case held that the various fee interests of the respective airport authorities were exempt.

In this case, the fee interest of the Airport Authority, pursuant to the Harrisburg-Raleigh case, was exempt from taxation since it was owned by an airport authority and used for airport authority purposes during the 1996 assessment year. The assessor then assigned a leasehold parcel index number to the area rented to Emtoo and used by it as its office. In view of the holding in the Harrisburg-Raleigh case, the fact that the Airport Authority leased the Emtoo office area to Emtoo would not make the fee taxable, since it was leased for airport authority purposes. Consequently, pursuant to 35 ILCS 200/9-

195, I conclude that the assessor properly assigned a leasehold property index number to the Emtoo rental parcel. It has been established that Emtoo is a for-profit business corporation which would not qualify for exemption from real estate taxation.

In the case of People ex rel. Korzen v. American Airlines, Inc., 39 Ill.2d 11 (1968), the Illinois Supreme Court held that pursuant to the provision which is now found at 35 **ILCS** 200/9-195, a parcel owned by the City of Chicago, located at Chicago-O'Hare Airport and leased to American Airlines was properly assigned a leasehold parcel index number, and a leasehold assessment was properly issued thereon. In view of the Courts decision in Harrisburg-Raleigh, I conclude that the Court's decision in the American Airlines case applies here, and the leasehold assessment against Emtoo was correct and proper, and the Department's denial of the exemption in this matter should stand as originally issued.

Applicant's (Emtoo's) Exhibit 5 includes the last two pages of a Peoria County Circuit Court opinion entered by Judge Barra on December 21, 1995. I take Administrative Notice that those two pages are part of the Peoria County Circuit Court decision in Docket No. 94-MR-289 which concerned an administrative review of the Department's decision in Docket No. 92-72-73. That case concerned the Greater Peoria Airport Authority, owner, and Byerly Aviation, Inc., lessee. Said case involved only one issue, which was whether the fee parcel number which was assigned to a parcel of land improved with a hangar which was owned by the Airport Authority and leased to Byerly Aviation, Inc. pursuant to a fixed base operator agreement qualified for exemption. The Department determined that said fee parcel did qualify for

exemption. On administrative review, the circuit court appeared to make statements concerning the leasehold assessment provision presently found in 35 **ILCS** 200/9-195, however, those statements were dicta, concerning an issue which was beyond the scope of the jurisdiction of the court in that case.

35 **ILCS** 200/15-160 requires two prerequisites for a parcel of property to qualify for exemption: It must be owned by an airport authority and used for airport authority purposes. Harrisburg-Raleigh Airport Authority and Fox Valley Airport Authority v. The Department of Revenue, 126 Ill.2d 326 (1989). The Court in that case held that this provision was broader than the provisions for municipal airports which required ownership by a municipality and use for public purposes. However, the Court held that this exemption is limited to property owned by an airport authority. To hold that this provision exempts Emtoo, a for-profit business corporation, would require going beyond the scope of the Constitutional enabling provision found in Article IX, Section 6, of the Illinois Constitution of 1970.

Based on the foregoing, I recommend that Peoria County Leasehold Parcel No. 17-15-376-006 remain on the tax rolls for the 1996 assessment year, and that the taxes thereon be assessed to Emtoo, Inc.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

October 24, 1997